

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1539 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

REVABEN WD/O KHODABHAI RAMBHAI

Versus

HIMATLAL S DAVE

Appearance:

MR PV NANAVATI for Petitioners
MR RN SHAH for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/09/2000

ORAL JUDGEMENT

1. The original plaintiffs have filed the present appeal challenging the judgment and decree dated March 18,1978 passed in Civil Suit No. 2701 of 1973 by the learned City Civil Judge, Ahmedabad. The plaintiffs in

the said suit inter-alia averred that the plaintiffs constitute a joint family and their ancestral Ramdas died on May 21, 1964 leaving behind him his son Khodabhai who also died leaving behind him the plaintiff no.1 and his sons, plaintiffs no. 2 to 4. It is the case of the plaintiffs that Khodabhai left behind him lands bearing survey nos. 257, 258, 262-B and 23 of village Mithakhali in District and Sub District Ahmedabad. It is further averred that on the death of Ramdas, the above properties devolved upon his son and the grandsons had interest in the properties since the date of their respective birth. It is the case of the plaintiffs that Khodabhai led an immoral and extravagant life; that the present defendant got executed sale deeds of the above properties from said Khodabhai and his mother Bai Krushna for inadequate considerations. It is further the case of the plaintiffs that the land bearing survey no. 262-B admeasuring 77 sq.yds. was never sold by Khodabhai and, therefore, the said property continued to be of the ownership and in possession of the plaintiffs and despite so, the defendant got the aforesaid property bearing survey no. 262-B mutated in his name in the city survey records and since the plaintiffs are in possession of the said land, the defendant was trying to disturb their possession, the plaintiffs filed the present suit praying for a declaration that the land bearing survey no. 262-B admeasuring 77 sq.yds. with some huts thereupon is of the ownership of the plaintiffs and in their possession and for consequential injunction against the defendant restraining him from interfering with their possession.

2. In the written statement Ex. 13, the defendant inter-alia contended that the land bearing survey no. 262-B was sold to the present defendant by sale deed executed in his favour and in view of the consensus arrived at between the parties in earlier suit, the defendant denied that the plaintiffs were in possession of the land in question.

3. From the pleadings, the learned trial judge framed issues at Ex. 19 and after considering the evidence on record, by the impugned judgment, the learned trial judge dismissed the plaintiffs' suit for declaration as to the ownership over the properties bearing survey no. 262-B. The learned trial judge, however, recorded a finding that the plaintiffs are in physical possession of land bearing survey no. 262-B. The learned trial judge was pleased to restrain the defendant from interfering with the plaintiffs' possession except by due process of law by clarifying that the said injunction will not prejudice the rights of

the occupants of survey nos. 257 and 258 using the land of survey no.262-B for going to and from the said survey number or using the latrine, if any, therein.

4. Mr.P.V.Nanavati, learned Counsel appearing for the appellants, after taking me through the evidence on record, submitted that the learned trial judge has committed an error in interpreting sale deed Ex. 36, 37 and the consent terms Ex. 41. He further submitted that the learned judge ought to have held that the plaintiffs are co-owners of the land in question and, therefore, the ancestor Khodabhai could not enter into sale deed with the respondent with respect to the land in question.Mr.Nanavati submitted that even in the consent terms, there is no reference to survey no. 262-B and, therefore, no reliance could have been placed on the consent terms.

5. Mr.R.N.Shah, learned Counsel appearing for the respondent no.1, on the other hand, supported the judgment of the learned trial judge in toto.

6. Perusing the evidence of plaintiff no.1 Revaben at Ex. 20, Talsaji Ex. 21 and Himatlal Ex. 23,it is clear that the plaintiffs are in actual possession of the land bearing survey no. 262-B along with Talsaji who was inducted as the tenant in the said land. It is also clear that the hut of Talsaji was demolished by the Municipal Corporation in the year 1972. It is, therefore, clear that except the hut of the plaintiffs in survey no. 262-B which is an open piece of land, nothing is existing. The question that arises for consideration is whether the open piece of land bearing survey no. 262-B is jointly owned by the plaintiffs and the defendant or the defendant is the exclusive owner of the said land. To decide the said question, it is necessary to see three documents produced in the case i.e. Ex. 36, 37 and 41. Ex. 36 is the copy of the sale deed dated 25.1.1955 executed by Khodabhai and his mother Bai Krushna in favour of the present respondent no.1 for a consideration of Rs. 500/- conveying the properties as under:-

Ward No. Survey No. Sq.Yds. Mun.Census No.

(1)Changispur 258 42 1493/3
262-B 77 Khadki of joint
ownership of
houses including
this house.

The description of the properties sold vide Ex. 36 show door, ota, steps, roof of the house etc. towards the north abutting the open land belonging to this house and in front of which there is Khadki bearing new survey no.262-B of the ownership of houses including this house and in that Khadki, there is a latrine. The owner of this house has a right to go in. Moreover, in the Khadki, there is right of joint ownership.

7. After giving four boundaries, the description of the properties shown therein provide that this house is open entirely from sky to Patal including the open land belonging to the house and the joint khadki and latrine thereon and other rights pertaining thereto. Finally, it is provided in the said sale deed that one Kantilal Sakalchand Patel filed a suit to recover his dues and obtained decree and filed Execution Application No. 409 of 1954 to recover the decretal amount and, therefore, the house is sold for a consideration of Rs. 500/-.

8. Reading the said sale deed Ex. 36, it is clear that the ancestors of the present appellants sold the house bearing survey no. 258 admeasuring 42 sq.yds. to the respondent no.1 to pay the decretal dues which is legal necessity and along with it, gave the right of co-ownership in khadki bearing survey no. 262-B admeasuring 77 sq.yds. The ancestors of the appellants were also having another house bearing survey no. 257 in the same khadki and, therefore, the respondent no.1 was not given the exclusive right of ownership of khadki bearing survey no. 262-B and, therefore, it was stated in the said sale deed that khadki being of joint ownership of houses include this house.

9. Another transaction is of sale whereby the ancestors of the appellant Khodabhai and his mother Bai Krushna executed sale deed Ex. 37 dated October 31,1957 in respect of house bearing survey no. 257 to the present respondent no.1. The said property conveyed under the said sale deed is described as under:-

Ward No. Survey No. Sq.Yds. Mun.Census No.

(1)Changispur 257 33 1493/A/2
262-B - Khadki of joint
ownership of
this house and
house bearing
survey no.258
which was earlier
sold.

It is stated in the said document that the properties are sold by this sale deed. It is further stated in the said document that "door, ota, steps, eaves of the roof etc. towards north in the open land belonging to this house and in front thereof the house bearing survey no. 258 earlier sold by us to you and in front of which there is khadki wherein survey no. 262-B of the ownership of this house and the house bearing no. 258 which we earlier sold to you and in that khadki, there is a latrine which is of the ownership of this house and the house earlier sold by us to you and the said khadki has now become of full ownership of yours."

10. Reading the aforesaid two sale deeds, Ex.36 and Ex. 37 which are for different properties, it is clear that by the earlier sale deed Ex.36, right of joint ownership with respect to the khadki i.e. survey no. 262-B was given to the purchaser and by the subsequent sale deed, another house bearing survey no. 257 was conveyed to the respondent no.1. Even though it is stated in the first part of the sale deed that khadki being of joint ownership of this house, namely survey no.257 and house bearing survey no. 258 which was earlier sold, therefore, at the end, it is recited that the said khadki has now become ownership of the respondent no.1. Thus, the language of both the sale deeds Ex. 36 and 37 is clear and unambiguous and since the ancestors of the appellants sold both the houses to the respondent no.1, there remained nothing in the khadki and, therefore, the ownership right was conveyed to the respondent no.1. It is stated that retaining the right of ingress and egress, the ownership right is retained by the seller, which in my opinion, does not fit in with the recitals stated in the earlier part of the document. It appears that obviously there is a typing error inasmuch as instead of "Tamaro", it is stated "Amaro". Thus, reading both the documents as a whole, together with intention of the parties, it is clear that the respondent no.1 was entrusted with the ownership right of khadki by the ancestors of the appellants.

11. Then comes the document Ex. 41 which is the consent terms dated February 10,1967 arrived at between the plaintiffs with the present respondent no.1 in Civil Suit No. 529 of 1965. Ex. 42 is the copy of the plaint filed by the present plaintiffs in the said suit against the present respondent no.1 wherein it was inter alia stated that the suit property wherein survey nos. 257, 258, 23, 262-B belonged to the Hindu joint family of the plaintiffs; that their predecessor sold properties

bearing survey no. 257, 258 and 23 by sale deeds to the present respondent no.1 and that the said sales were without consideration or for inadequate consideration and for immoral purpose and, therefore, a declaration was prayed that the sale deeds in question did not bind the plaintiffs. In the said suit, parties arrived at a settlement and filed consent terms Ex. 41. Some important terms of the consent terms are as under:

- "1. That the properties sold to the defendant by the plaintiffs predecessors, but sale deed dated 25.1.1955, 31.10.1957 and 6.11.1958, that is, properties bearing survey no. 258, 257 and 23 were duly admitted by the plaintiffs to be good conveyance and the plaintiffs gave up their contentions challenging the said three sale deeds;
2. That the plaintiffs did not have any right, title or interest in the properties conveyed by the aforesaid sale deed; with a view to bury the dispute the defendant of the said suit agreed to pay and eventually paid Rs. 5000/- to the plaintiff. In this connection, it has been stated 'It is so decided that in the said property, whatever right, title and interest etc. the present plaintiffs or their predecessors might have, was given up and in consideration thereof, Rs. 5000/- are to be received by the plaintiffs from the defendants (in the mode and manner stated thereafter)'. .

The aforesaid recitals are with reference to sale deeds Ex.36 and 37. These sale deeds include survey no.262-B admeasuring 77 sq.yds. and has been described as the subject matter of the respective sale deeds. It is with respect to these sale deeds and the properties included therein that the above recitals in the consent terms mention that the plaintiff did not have any right, title or interest and if there was any, it was given up for a particular consideration stated in the consent terms. As stated in the consent terms, the plaintiffs agreed that "we have given up all contentions of the present suit and it is hereby agreed that we shall not create any obstruction, interference, inconvenience or dispute with the defendant no.1 (present respondent no.1) with respect to the exclusive ownership and full possession of the immovable properties sold by the aforesaid three sale deeds". It is clear that the plaintiffs have given up all the disputes and declared the respondent no.1 to be exclusive owner and in full

possession thereof. Reading the consent terms Ex. 41, there remains no doubt that the respondent no.1 is the exclusive owner of survey no.. 262-B and that the present appellants have conveyed to him ownership rights of survey no. 262-B by virtue of Ex. 36 and 37 and, therefore, it is not correct to say that the consent terms Ex. 41 does not include survey no. 262-B. The contention advanced by Mr. Nanavati is, therefore, rejected.

12. Similarly, the contention that the ancestors of the appellants did not sell the property without any legal necessity also does not require any consideration particularly in view of the fact that it is recited in the document that with a view to pay the decretal dues, the properties were sold. In any case, since the appellants had given up all their contentions by filing the consent terms, even this contention is also not available to Mr. Nanavati. In view of this, I am clearly of the opinion that the learned judge was perfectly justified in holding that the appellants are the owners of the suit land bearing survey no. 262-B of Changispur alias Mithakhali, Ahmedabad. Therefore, it is not necessary to interfere with the judgment and order passed by the learned trial judge.

13. In the result, this appeal fails and is dismissed. Considering the facts and circumstances of the case, no order as to costs.

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